IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 4624 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESH H.SHAH - Applicant(s)
Versus
PUSHPABEN BALDEVBHAI RATHOD & 1 - Respondent(s)

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Appearance :
MR PR NANAVATI for Applicant(s) : 1,
MR.HARDIK BRAHMBHAT for Respondent(s) : 1,
MR MR MENGDE, ADDL. PUBLIC PROSECUTOR for Respondent(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 07/08/2007

ORAL JUDGMENT

1. By way of this application under section 482 of the Cr.P.C., the applicant – original accused No.2 of criminal case No. 49 of 1999

subsequently renumbered as criminal case No.1009 of 2000 pending in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad has prayed for an appropriate order to quash and set aside criminal case No. 49 of 1999 subsequently renumbered as criminal case No. 1009 of 2000 filed by the respondent No.1 in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural) Ahmedabad.

2. A criminal complaint has been filed by the respondent No.1 herein in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad being criminal case No.49 of 1999 subsequently renumbered as criminal case No.1009 of 2000 against the applicant and another for the offence punishable under sections 406, 420, 120(B) & 114 of the I.P.C. alleging inter alia that the complainant wanted to purchase one house and she contacted building contractor, who was doing the business of selling and purchasing the buildings / houses in the name of M/s. P.G.Corporation and she became the member of one

Tejendra Apartment by paying Rs.40,000/- initially. It is further alleged in the complaint that the sale consideration was fixed at Rs.1,80,000/- and for the payment of the same, the complainant asked for the loan papers and the original accused No.1 – builder suggested name of the applicant who was the L.I.C. Agent and it is alleged that the applicant managed for sanctioning of the loan of Rs.1,92,000/- on 25.8.1995 which was subsequently paid to the original accused No.1 – builder. Thus, it is alleged that the complainant has paid an amount of Rs. 2,32,000/- to the original accused No.1. It is the case on behalf of the original complainant in the complaint that flat No.B-7 was booked and inspite of the payment of the entire sale consideration, possession of the flat has not been handed over to the complainant by the original accused No.1 and is not handing over the possession and therefore, the husband of the complainant has filed one complaint before the Crime Branch Police Station but yet no action

has been taken. It is alleged in the complaint that the complainant came to know that the said flat No.B-7 has been sold to other person and therefore, the husband of the complainant approached the accused and has requested to return the amount and the original accused No.1 has given one cheque for an amount of Rs.27,000/- and has assured that the rest of the loan will be repaid to the complainant. It is alleged in the complaint that the said cheque was deposited with the bank, however, the same has been dishonoured. Thus, it is alleged in the complaint that the applicant has paid the entire sale consideration by taking loan from L.I.C. and has paid an amount of Rs.2,32,000/- to the accused No.1 but neither the possession has been handed over to the complainant nor amount has been returned and therefore, it is alleged in the complaint that the accused has committed offence under sections 406, 420, 120(B) & 114 of the I.P.C. and the aforesaid complaint has been filed. In the said complaint the learned trial Court has passed an order to send the complaint

for inquiry under section 202 of the Cr.P.C. and thereafter, after submission of the report by the I.O., the learned Chief Judicial Magistrate issued summons against the accused for the aforesaid offence. Being aggrieved and dissatisfied with the same, the applicant – original accused No.2 has preferred present application for quashing and setting aside the aforesaid complaint and the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad issuing summons against the applicant for the offence under sections 406, 420, 120(B) & 114 of the I.P.C.

3. Shri P.R.Nanavati, learned advocate appearing for the applicant has vehemently submitted that the applicant has not committed any offence as alleged under sections 406, 420, 120(B) & 114 of the I.P.C. It is submitted that the applicant was L.I.C. Agent and therefore, when the original complainant was approached for sanctioning of the loan, the applicant managed to get the loan sanctioned of Rs.1,92,000/- and

the said cheque was paid to the complainant and therefore, so far as the applicant is concerned, his work was over. It is submitted that whatever the offence has been committed, that might have been committed by the original accused No.1 and if the applicant has any grievance and/or cause of action, the same must have been against the original accused No.1. It is also submitted by Shri Nanavati, learned advocate that even the complainant has earlier preferred complaint before the Consumer Forum in which the applicant was also joined, however, subsequently, the applicant was deleted and therefore, it is requested to quash and set aside the complaint.

4. Shri Hardik Brahmbhatt, learned advocate appearing for the respondent No.1 – original complainant has submitted that after inquiry under section 202 of the Cr.P.C. and considering the report, a case was made out against the applicant for the aforesaid offence and the learned trial Court has rightly issued summons upon the applicant, which is not required to be

interfered with and/or quashed and set aside. However, learned advocate appearing for the respondent No.1 has tried best to satisfy this Court how a case is made out against the applicant for the offence under sections 406, 420, 120(B) & 114 of the I.P.C.

5. On bare reading of the complaint and the averments in the complaint, it appears to the Court that the allegations are against the original accused No.1. The applicant is a L.I.C. Agent and his work was to get the loan sanctioned and he has performed that part of his work and the loan was sanctioned and the cheque for an amount of Rs.1,92,000/- was paid to the original complainant. Therefore, considering even the averments in the complaint on its face value, no case is made out against the applicant – original accused No.2 for the offence under sections 406, 420, 120(B) & 114 of the I.P.C. It is also required to be noted that even the original complainant had earlier filed complaint before the Consumer Forum in which the applicant

was also joined as a party, however, the complaint against the applicant was withdrawn. Considering the aforesaid facts and circumstances of the case, to continue criminal proceedings against the applicant would be abuse of the process of law and as stated above, on bare reading of the averments in the complaint, it does not disclose that the applicant has committed offence under sections 406, 420, 120(B) & 114 of the I.P.C. Under the circumstances, the impugned complaint qua the applicant – original accused No.2 and the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad dated 27th March, 2000 issuing summons upon the applicant for the offence under sections 406, 420, 120(B) & 114 of the I.P.C. in criminal case No. 49 of 1999 subsequently renumbered as criminal case No.1009 of 2000 requires to be quashed and set aside.

6. For the reasons stated above, application succeeds. Criminal case No. 49 of 1999 subsequently renumbered as criminal case No.1009

of 2000 filed by the respondent No.1 pending in the Court of learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad is hereby quashed and set aside qua the applicant – original accused No.2 and also the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural), Ahmedabad issuing summons against the applicant in the said criminal complaint is quashed and set aside qua the applicant – original accused No.2. Rule is made absolute accordingly.

(M.R.Shah, J.)

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